IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.MC.No. 548 of 2006(C)

CC.80/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), PUNALUR

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PETITIONER: ACCUSED NO.1.

MUHAMMED BASHEER, S/O.MYDEEN KUNJU,
MATTUPPAVU VEEDU, MULLASSERY, MADATHARA,
CHITHARA VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.S.RAJEEV
SRI.K.V.VINODKUMAR

RESPONDENTS: RESPONDENT.

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR GIKKU JACOB.
SMT.SUSHEELA R BHAT,SPL,G.P,FOREST

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 548 OF 2006

Dated this the 5th day of December, 2006

ORDER

The petitioner is the 1st accused in a prosecution under the provisions of the Kerala Forest Act.

2. The crux of the allegations against him is that he along with the 2nd accused, who is no more and was not available to face trial, had trespassed into the forest along with two others. On receipt of discreet information, they were apprehended in the forest by the officials. The co-accused 3 and 4 allegedly took to their heels and could not be apprehended.

3. As the petitioner was not available for trial, the trial against him got adjourned indefinitely. The 2nd accused expired and he was not available for trial. Accused 3 and 4 were tried. They were found not guilty and acquitted for offences under the Kerala Forest Act as also the offences under the Arms Act. The petitioner against whom the case is continuing to be pending before the learned Magistrate has come to this Court with the prayer that the prosecution in so

far as it against him under the provisions of the Kerala Forest Act may be quashed. The co-accused have already been acquitted and that is advanced as a reason to justify the prayer for quashing of the proceedings. The learned counsel for the petitioner points out that the doctrine of issue estoppel must operate to the advantage of the petitioner and persuade this Court to quash the proceedings.

4. I find absolutely no merit in this contention. The 2nd accused who was apprehended along with the 1st accused has not faced the trial. Accused 3 and 4 were not apprehended at the scene. In these circumstances, assuming that accused 3 and 4 have been acquitted that cannot certainly give rise to any advantage or benefit in favour of the petitioner.

5. It is further contended that the petitioner has been acquitted in the prosecution under the Arms Act. In that case the issue whether the petitioner had trespassed into the forest was not an issue at all and the issue considered and which had to be considered was only whether he was in possession of the weapon. His acquittal in that prosecution under Annexure-IV does not also help the petitioner to seek quashing of this prosecution with the help of the principle of issue estoppel. The issue of trespass into the forest did not at all arise in that prosecution.

6. In these circumstances, I find no merit in the prayer to

invoke the powers under Sec.482 of the Cr.P.C. to quash the proceedings. The challenge must fail.

7. In the result, this Crl.M.C. is dismissed. I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all relevant and appropriate contentions before the learned Magistrate in the course of trial.

(R. BASANT, JUDGE)

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